**IN THE HIGH COURT OF JUDICATURE AT PATNA**
**Cr.Misc. No.25214 of 2007**

1. **MD. ARASH KHAN @ ARASH KHAN, SON OF ABDUL KARIM KHAN.**
2. **SAIRA KHATOON, WIFE OF MD. ARASH KHAN @ ARASH KHAN.**
3. **MD. FIROJ KHAN @ FIROJ KHAN, SON OF MD. ARASH KHAN.**
4. **TARNNUM KHATOON, WIFE OF FIROJ KHAN.**
   **ALL ARE RESIDENT OF VILLAGE: CHATURBHUJAWA, P.S. SHIKARPUR, DISTRICT-WEST CHAMPARAN.**
   **……...PETITIONERS.**

**Versus**

1. **THE STATE OF BIHAR.**
2. **MOSART PRAVEEN, DAUGHTER OF HUSMULLAH BEG, RESIDENT OF VILLAGE-BARWA KALA, P.S. SATHI, DISTRICT-WEST CHAMPARAN.**
   **……OPPOSITE PARTIES.**

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**For the Petitioners : Akhileshwar Kumar Srivastava, Advocate.**
**For the State : Mr. Jharkhandi Upadhayay, A.P.P.**
**For O.P. No.2 : None.**

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**O R D E R**

The four petitioners who happen to be the close relatives of the husband of the complainant of Complaint Case No.1817(C) of 2006 and who along with the husband have been arrayed as accused in the said case have prayed for the quashing of the entire criminal proceeding including the order dated 10.4.2007 passed therein by the learned Chief Judicial Magistrate, West Champaran at Bettiah, whereunder he has taken cognizance of offences under Section 498-A as also Section 4 of the Dowry Prohibition act.

The complainant, one Mosarat Praveen, impleaded as O.P. No.2 herein, preferred the aforesaid complaint case inter alia alleging commission of offences under Sections 406, 498A I.P.C. and Sections

3 and 4 of the Dowry Prohibition Act at the hands of the accused persons who were parents-in-law, husband, her bhaisur and gotini. It is said that her marriage with Afroz Alam took place on 19.6.2005 whereat various gifts including a motorcycle to the bridegroom was given all of which added upto Rs.3 lacs. On entry into the matrimonial home she was harassed and tortured for not bringing anticipated dowry commensurate with the earning status of her husband who was employed in Oman and earned Rs.25,000/- per month and that his marriage elsewhere would have fetched a more handsome dowry. Pressure was put on her to bring a Marshall jeep as additional dowry which she refused as the financial condition of her father was not good and was already under heavy debts incurred for the marriage. For non-fulfilment of the demand she was subjected to torture and cruelty, mental and physical, everyday and she and her parents were abused and she was assaulted and threatened of being killed if the demand was not fulfilled and the husband would be married elsewhere. Efforts by the father and brother to reason with the accused proved fruitless. Eventually after a month her brother took her away to his home and several panchayatis followed. Finally on 2.8.2006 the complainant returned to the matrimonial home but the situation did not improve and the demand was reiterated as was the intensity of torture and cruelty. She also came to know of her husband's illicit relationship with accused no.5 and on the instigation of accused no.5 her husband assaulted her brutally. An apprehension developed in the mind of the complainant that she would be killed any

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moment by the accused persons. On 7.8.2006 she was again assaulted severely as a result whereof her health deteriorated seeing which her brother again tried to reason with the accused but without any success and the demand was reiterated. The brother again brought her to his home. More panchaytis were held without any success.

The submission on behalf of the petitioners is that they have been falsely implicated in this case as a counter blast to the Divorce Case filed by the husband earlier. It was further submitted that the Opposite Party No.2 and her family wanted to keep Afroj Alam in their clutches as a ghar jamai in the hope of being beneficiary of the handsome money he earned in Oman and that Afroj Alam was not agreeable to the same more so because there was no other earning member in his family who could look after his aged parents and unemployed brothers and sisters. It was further submitted that on 15.7.2005, O.P. No.2 left the matrimonial home with her brother and since then she is not ready to come back. Eventually 8.8.2006 was fixed as the date for her bidai and when Afroj and his relatives went for the bidai she was not ready to come back to the matrimonial home which resulted in hot exchange of words between them. It was also submitted that when Afroj came to know about her disinterestedness in leading the conjugal life with him he had no option but to give talaq to Opposite Party No.2 in presence of witnesses. Thereafter on 19.8.2006 Afroj filed a regular Matrimonial Suit No.79 of 2006 for confirmation of talaq given on 8.8.2006. On the aforesaid premise, it was sought to be submitted that having given talaq to his wife, O.P.

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No.2, was no more his legally wedded wife and in that view of the matter the Sections whereunder the cognizance has been taken were not attracted either to the petitioners or to Afroj. It would not be out of place to mention here that the instant complaint came to be filed on 22.9.2006 by way of a counter blast and with a view to harass and humiliate the petitioners and her husband. O.P. No.2 has already entered her appearance in the Matrimonial Case on 2.11.2006 wherein she has filed her written statement to contest the suit. It was further contended that in this background continuation of the criminal proceeding would amount to an abuse of the process of the court and the entire criminal proceeding ought to be quashed.

The further grievance of the petitioners is that although they had placed the ordersheet of the Matrimonial Case from 19.8.2006 to 21.9.2006, copy of the plaint of the Matrimonial Case and photo copy of the Informatory Petitioner before the learned Magistrate, he had ignored the same and had taken cognizance.

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There are two aspects of the matter. Firstly, the entire scheme of Chapter XVI Cr.P.C. shows that an accused person does not come in the picture at all till processes is issued. This does not mean that he is precluded from being present when an inquiry is held by a Magistrate. He may remain present either in person or through a counsel or agent with a view to be informed of what is going on. But since the very question for consideration being whether he should be called upon to face an accusation, he has no right to take part in the proceeding nor has the Magistrate any jurisdiction to permit him to do

so.

The other aspect is that since the object of an inquiry under Section 202 Cr.P.C. is to ascertain whether the allegation made in the complaint are intrinsically true, the Magistrate acting under Section 203 Cr.P.C. has to satisfy himself that there is sufficient ground for proceeding . In order to come to this conclusion he is entitled to consider the evidence taken by him or recorded in an inquiry under Section 202. He is not entitled to look into any other material besides what has come in the inquiry. Reference in this connection can gainfully be made to the case of Chandradeo Vs. Prokash Chandra (AIR 1963 SC 1430).

There is still another aspect of the matter. The giving of talaq or filing of a matrimonial suit for confirmation of the alleged talaq is the defence of the accused persons. Such defence cannot be looked into by the Court in exercise of powers under Section 482 Cr.P.C. The petitioners, if they so desire, may raise these issues at the time of framing of charge or any other appropriate time.

With the aforesaid observations, this application is devoid of any merit and is dismissed.

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**(Abhijit Sinha,J)**

**Patna High Court, Patna.**
**Dated:The 19th of November, 2008.**
**Pradeep Srivastava/A.F.R.**